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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/083,079 | 02/26/2002 | Dominik Schutz | TRW(ASG)6052 | 4699 |
| 26294 | 7590 | 09/29/2005 | EXAMINER | |
| TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 526 SUPERIOR AVENUE, SUITE 1111 CLEVEVLAND, OH 44114 | | | LUONG, VINH | |
| | | ART UNIT | | PAPER NUMBER |
| | | 3682 | | |

DATE MAILED: 09/29/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/083,079
Filing Date: February 26, 2002
Appellant: SCHUTZ, DOMINIK

MAILED
SEP 29 2005
GROUP 3600

Robert N. Lipcsik
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 7, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of claims

The statement of the status of the claims contained in the brief is substantially correct. The statement “[c]laims 1-4, 6-11, and 13 stand rejected as anticipated by Bohn et al., EP 0 945 310 *and* US 6,312,012 (hereinafter ‘Bohn et al.’)” (emphasis added) should have been changed to “[c]laims 1-4, 6-11, and 13 stand rejected as anticipated by Bohn et al., EP 0 945 310).”

The rejection is based on EP 0 945 310 because the publication date of EP'310 (September 29, 1999) was earlier than the publication date of Pat.'012 (November 6, 2001). The Examiner cited US Pat.'012 since it is an English translation of EP'310 to facilitate the understanding of the rejection.

(4) Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of claimed subject matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of rejection to be reviewed on appeal

The Appellant's statement of the grounds of rejection to be reviewed on appeal in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence relied upon in the rejection of claims under appeal.

| | | |
|------------------|-------------|----------|
| EP 0 945 310 A2 | Bohn et al. | 09-1999 |
| (US 6,312,012 B1 | Bohn et al. | 11-2001) |

(9) Grounds of rejection

The following grounds of rejection are applicable to the appealed claims:

- (a) Claims 1-4, 6-11, and 13 are rejected under 35 U.S.C. 102(b) as being unpatentable over Bohn et al. This rejection is set forth in the final rejection on November 1, 2004; and
- (b) Claim 5 is rejected under 35 U.S.C. 103(a) as being obvious over Bohn et al.

(10) Response to argument

The Examiner's response to Appellant's arguments in the final rejection on November 1, 2004 is incorporated herein by reference. In the following, the Examiner addresses Appellant's arguments that have not been responded in the final rejection.

First, Appellant argues:

One of ordinary skill in the art would not recognize that the studs (10 or 26) of Bohn et al. necessarily tilt when the cover cap (6) is axially depressed, for the following reasons:

1. Bohn et al. do not state anywhere in the reference that the studs (10 or 26) tilt.
2. Bohn et al. disclose a radially extending flange (11 in Fig. 1) and a washer (13 in Fig. 2) that provide a radially extending surface that would prevent the studs (10) from tilting.

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3. Bohn et al. disclose a cover cap (6) that will yield when the edge of the cover cap (6) is depressed such that none of the studs (10 or 26) tilt.

4. Bohn et al. disclose that the mounting plate (30) of the gas bag module (5) may tilt when the horn is actuated. Bohn et al. does not disclose tilting of the studs (10).

First, even if Bohn et al. do not state anywhere in the reference that the studs (10 or 26) tilt, however, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference are nonetheless inherent in it. See *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principle of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates. See *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986).

In the instant case, Appellant explicitly admitted that the bolts 10 or 26 of Bohn would tilt when sufficient force is applied to the cap 6. See the Examiner's quotation of Appellant's Amendment filed on July 30, 2003 on page 8 of the final rejection.

Second, the radially extending flange 11 and the washer 13 would *not* prevent the studs (10) from tilting because the flange 11 and the washer 13 are abutted with the foamed sheathing 4 as seen in Figs. 2 and 3. Since the foamed sheathing 4 is soft, thus, the foam 4 will be deformed to let the bolts 10 or 26 tilt.

Third, contrary to Appellant's statement, Bohn et al. do *not* disclose the cover cap (6) that will yield when the edge of the cover cap (6) is depressed *such that none of the studs (10 or 26) tilt* (Emphasis added). To the contrary, Bohn et al. disclose in col. 3, lines 42-46 that the mounting tabs 17 *may be* tilted. When the tabs 17 are tilted, the bolts 10, 26 are tilted therewith because the bolts 10, 26 are abutted with the tabs 17 as seen in Fig. 3 of the Attachment # 1 of

the final rejection. This fact is explained by fundamental *Newton's Third Law of Motion* in standard Physics textbook, *i.e.*, to every action there is always opposed and equal reaction; or, the mutual actions of two bodies upon each other are always equal, and directed to contrary parts. In other words, when the tabs 17 are tilted due to an applied force, the tabs 17 cause an opposed and equal reaction on the bolts 10, 26. The tilting of the bolted 10, 26 is resulted from the instant opposed and equal reaction.

Fourth, Appellant admits that Bohn et al. disclose that the mounting plate (30) of the gas bag module (5) may tilt when the horn is actuated. As shown in Fig. 2, the mounting plate 30 is abutted with the bolts 26, therefore, when the plate 30 is tilted, the bolts 26 are tilted therewith. See *Newton's Third Law of Motion* above.

Appellant further contends that while it may be true that if one uses a tilt hammer to hit on Bohn's casing in the direction F, the stud 10 inherently is tilted, however, destroying a structure with a hammer in order to create a particular motion of its parts would not have occurred to one of ordinary skill in the art and is not a reasonable interpretation of Bohn et al.

The Examiner respectfully submits that the Examiner's description regarding the hammer is merely an example to facilitate Appellant's understanding as to how the bolts of Bohn et al. can be tilted. Common sense teaches that one of ordinary skill in the art does not need to use the hammer to tilt the bolts of Bohn et al. In fact, Figs. 1-3 of Bohn et al. show that if one uses the hand to squeeze sufficiently strong on the cap 6 in the direction F shown on page 3 of Attachment # 1, the bolts 10, 26 will tilt due to the deformation of the foam sheathing 4. On the other hand, Appellant's instant arguments are in direct conflict with Appellant's own admission that the bolts 10, 26 of Bohn et al. will tilt in the Amendment filed on July 30, 2003. Appellant

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should be estopped from denying Appellant's own admission made during the prosecution history of the instant case. *Cf., In re Nomiya*, 184 USPQ 607 (CCPA 1975).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's answer.

CONCLUSION

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Vinh T. Luong
Primary Examiner

September 24, 2005

Conferees on May 24, 2005

SPE David Bucci


Primary Examiner Kim Chong

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